

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Proficiency Determination, Contract Counsel</b>	Policy No.: <b>135</b>
Title: <b>47</b>	Pages: <b>3</b>
Section: <b>1-121(10)</b>	Last Review Date: <b>2-14-18</b>
Effective Date: <b>12-6-06</b>	Revision Date: <b>2-14-18</b>

### 1.0 POLICY

- 1.1 Each contract attorney (Contract Counsel) providing public defender services on behalf of the Office of the State Public Defender (OPD) shall undergo a proficiency determination on a biennial basis (every two years). The two-year time period begins with the effective date of the contract counsel's MOU.

### 2.0 PROCEDURE

- 2.1 The proficiency determination shall be conducted by the OPD Contract/Quality Control Manager (CQM) based on the written process listed in 2.8 below, and the results summarized in writing.
- 2.2 The CQM shall use the criteria in Attachment A to this policy as a guideline.
- 2.3 In accordance with 47-1-121 (6), MCA, division administrators and regional deputy public defenders shall supervise personnel providing contract services. The CQM must consult with these members of the OPD management team and with managing attorneys as part of the evaluation process.
- 2.4 In making the proficiency determination, members of OPD's management team and/or the CQM will observe the contract counsel in court.
- 2.5 The CQM may also obtain information from the following:
- 2.5.1 Clients of the contract counsel;
  - 2.5.2 Judges and other court personnel; and
  - 2.5.3 Faculty from any training programs which the contract counsel attended during the evaluation period.
- 2.6 The contract counsel will provide the CQM with a copy of the CLE transcript provided by the State Bar.
- 2.7 A new Attorney's Education and Experience Questionnaire will be submitted if the contract counsel wishes to provide services in a new practice area.
- 2.8 Written process:
- 2.8.1 The CQM shall meet with the contract counsel every two years as part of the biennial proficiency determination, in person or remotely.
  - 2.8.2 The CQM will discuss any issues brought forward by those listed in 2.3 through 2.5 with the contract counsel.
  - 2.8.3 The CQM and the contact counsel will develop a plan to address any issues identified; the plan may include not assigning cases of a certain type for a period of time, remedial training, mentoring, etc.
  - 2.8.4 The CQM and contract counsel will set a date to assess progress no more than six months from the date the plan was implemented.

**2.8.5** Contract counsel will be provided with a written summary of the proficiency determination, and may file a written objection to the findings with the CQM.

**3.0 RECORDS**

Originals of all records generated in the course of the proficiency determination process will be placed in the contract counsel's OPD file and maintained throughout the duration of time that the contractor is rendering professional services for OPD, and then for as long as required by the records retention policy.

**4.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

# ATTACHMENT A

## Biennial Proficiency Determination for OPD Contract Counsel

Contract Counsel Name: \_\_\_\_\_ Region(s): \_\_\_\_\_

Regional Deputy Public Defender(s): \_\_\_\_\_

Areas of Practice (check all that apply): ☐ DC ☐ DN ☐ DJ ☐ DG ☐ DI ☐ TK

CLE Affidavit Received and Reviewed: \_\_\_\_\_  
Date Contract/Quality Control Manager or Designee

	<b>Professionalism</b> <i>Dress, Behavior, Timeliness, etc.</i>	<b>Client Services</b> <i>Communication, explanations, etc.</i>	<b>Legal Knowledge</b> <i>Statutes, cases, rules, procedures etc.</i>	<b>Effective Advocacy</b> <i>Persuasive arguments, grasp of issues, etc.</i>
Excellent				
Competent/Acceptable				
Unacceptable				

Please list any comments:

**A. Comments from OPD Management (required)**

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**B. Comments/Complaints from Client(s), Judges, Court Personnel, Training Faculty if any:**

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**C. Comments from other OPD staff (regional or Central Services Division), if any:**

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The Office of the State Public Defender certifies that the above-named contract counsel is proficient in the following areas of practice: ☐ DC ☐ DN ☐ DJ ☐ DG ☐ DI ☐ TK

\_\_\_\_\_  
Date Contract/Quality Control Manager or Designee

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The Office of the State Public Defender certifies that the above-named contract counsel is NOT proficient in the following areas of practice: ☐ DC ☐ DN ☐ DJ ☐ DG ☐ DI ☐ TK

\_\_\_\_\_  
Date Contract/Quality Control Manager or Designee

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OPD recommends the following remedial action be completed within 90 days:

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